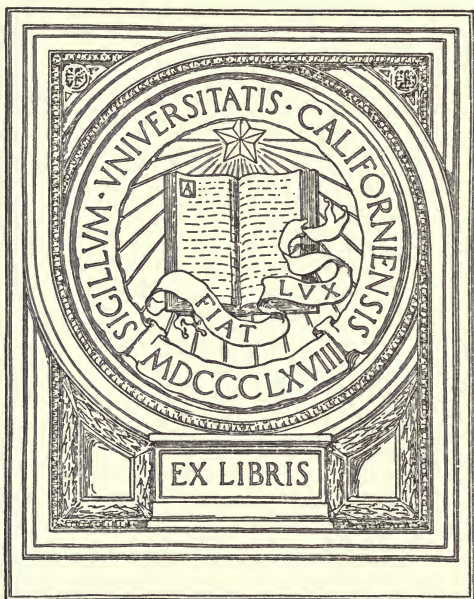


E

327

N5



E327
N5
X

A. H. Calhoun
A
LETTER

FROM

GEORGE NICHOLAS,

OF KENTUCKY,

TO

HIS FRIEND,

IN VIRGINIA.

JUSTIFYING THE CONDUCT OF THE CITIZENS OF
KENTUCKY, AS TO SOME OF THE LATE MEASURES OF THE GENERAL GOVERNMENT;

AND

CORRECTING CERTAIN FALSE STATEMENTS,

WHICH HAVE BEEN MADE IN THE DIFFERENT STATES, OF
THE VIEWS AND ACTIONS OF THE PEOPLE OF KENTUCKY.

LEXINGTON: PRINTED—PHILADELPHIA: REPRINTED,
BY JAMES CAREY, No. 16, CHESNUT-STREET.

E 220
N 5

A photograph of a piece of aged, yellowed paper with two rows of small, dark, circular holes, resembling a punch card or a perforated document. The holes are arranged in two horizontal lines, with the top line having approximately 15 holes and the bottom line having approximately 20 holes. The paper shows signs of wear, including creases and discoloration.

1947-1948

THE UNIVERSITY OF CHICAGO

[illegible]

1947-1948

A LETTER, &c.

MY DEAR SIR,

* * * * * having shewn me that part of your letter to him, which respects our politics, and myself, I have prevailed on him to lend me the letter, that I might have it in my power to answer it. I am induced to do this, as well from a desire to remove the unjust impressions and representations which have been received by, and made to, our fellow citizens, of our views and designs ; as from a wish, that by making our real sentiments public, an opportunity may be afforded, of detecting the errors on which they are founded, if they really are erroneous.

Before I enter on the subject, let me request your calm and deliberate consideration, of what I shall advance. Opinions and reasoning which are in opposition to what we think right ourselves, are often condemned and rejected too hastily ; but this is not the way to remove error ; full and dispassionate investigation is the only means of arriving at truth, and the real patriot can have no other object in his political enquiries.

The warmth of my own passions, the improper influence which I am conscious, that they too often have over my judgment, and the peculiar tendency which I feel, that they possess to lead the mind astray, in its attempts to form a just opinion as to our present political questions ; all conspire to make me urge this request on my friend, whose good opinion I wish to preserve, whose unintentional errors I wish to see corrected, and whose well known patriotism I wish to rouse, before that period shall arrive, when a conviction of the most important truths will come too late ; and when the remembrance that it was not felt earlier, will be attended with the most heart-felt sorrow and concern. If after having devoted the prime of your life to the establishment of the liberty of your country ; if after having shed your blood in its defence ; if after seeing yourself surrounded with children and grand children, for whose sakes you have voluntarily submitted to all the ills necessarily attendant on revolutions and wars ; what would be your feelings in the decline of life, if you should see that liberty destroyed ? I know you so well as to be satisfied, that nothing could add to the bitterness of such a situation, but the recollection, that you had by an improper and unlimited confidence, even undesignedly contributed to it. Pause then, my friend, and think deliberately and dispassionately, and do not let any improper conduct in a foreign nation, to which your attention is artfully turned on one side, blind you to the imminent danger which hangs over the liberties of your country, on the other. At the time you are calling out arm, arm, against the foreign foe, who you say threatens the independence of our country, do not

shut your eyes to domestic violations of our constitution, and our liberties. What will it avail us, if we can preserve our independence as a nation, nay, if we can even raise our country to the highest pitch of national glory, provided we at the same time lose our own liberties? If France is at this time subjected at home, to the military despotism which is said to reign there; will the conquest achieved by her arms, and the glory which surrounds her, compensate the people of that country in the smallest degree, for their lost liberties? Can the power and consequence of tyrants, ever alleviate the miseries of their slaves? If they cannot, we ought to consider it as a truth of the most important nature—that independence abroad is of no real value, unless it is accompanied with liberty at home.

The preamble to our constitution declares, that the securing this liberty, was the great and primary consideration, which induced the people of America to form that constitution? “We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.”

My feelings have forced from me these observations? I will now answer your letter.

You say “we entertain none of your fears, our liberties we think are not in danger.” It is not at all surprising when we form such different opinions of our political situation, that our conduct also should be so materially different; but as the conduct of either, can be right only as far, as the opinion by which it is actuated shall prove to be just, we ought carefully to ascertain which of those opinions is founded on propriety. No country can be free, unless it has a constitution, limiting in a sufficient degree, the powers of those who are appointed to administer the government; and also guarding those powers from abuse, as far as such a guard can be established. The most effectual guard which has yet been discovered against the abuse of power, is the division of it. It is our happiness to have a constitution which contains within it, a sufficient limitation to the power granted by it, and also a proper division of that power. But no constitution affords any real security to liberty, unless it is considered as sacred and preserved inviolate; because that security can only arise from an actual, and not from a nominal limitation and division of power. Every violation of such a constitution must be made in one of two ways; either by an assumption, by the government at large, of greater powers than is given to it, by the constitution; or by one branch of the government, assuming to itself, or having transferred to it by the other branches, powers which the constitution declares shall be exercised only by the other branches, or by the whole government. This transfer even of constitutional powers, from the whole to a part, or from the part to which they are given by the constitution, to a part to which they are not given; is as dangerous to liberty, as an assumption by the whole of the

the government, of more power than is given to it by the constitution, because the division of the power which is given, is as essential as its limitation to the preservation of liberty. Before therefore we can admit the truth of your opinion, that "our liberties are not in danger," we must be satisfied, that our government has neither assumed to itself, other or greater powers than are assigned to it by the constitution, nor violated that division of power, marked out by the constitution; by permitting any one branch of the government, to exercise powers especially confided by the constitution, either to the whole or to other parts of the government.

I will examine a number of the acts of our government by these tests. The constitution declares that "congress shall have power to raise and support armies," an act passed by congress gives the president power "in the event of a declaration of war against the United States, or of actual invasion of their territory by a foreign power, or of imminent danger of such invasion, *discovered in his opinion to exist* before the next session of congress to cause to be enlisted and to call into actual service, a number of troops not exceeding 10,000; to be enlisted for a term not exceeding three years." The same bill also enacts, "that in addition to the aforesaid number of troops; the president is hereby empowered, *at any time within three years, after the passing of this act, if in his opinion the public interest shall require it*, to accept of *any company or companies* of volunteers either of artillery, cavalry or infantry, who may associate and offer themselves for the service, who shall be armed, clothed and equipped at their own expence, and whose *commissioned officers the president is hereby authorized to appoint*; who shall be liable to be called to do military duty at any time the president shall adjudge proper, *within two years after he shall accept the same*." By this act the power vested by the constitution in congress "to raise armies" has been by them transferred to the president; and he is made the sole judge of the necessity of raising this army, and of the number that it shall consist of, so that the regulars do not exceed 10,000; but without any restriction as to the number of volunteers; and as the president is at liberty to accept of the volunteers, at any time within three years after the passing of the act, and as they are liable to be called on to do military duty, at any time the president shall adjudge proper, within two years *after* he shall except of their services, it may be truly said, that he has an absolute power for five years, to raise an army to any amount he pleases, to be commanded by officers of his own appointment, and to do such services as he shall be pleased to direct. And if these corps of volunteers are to be considered as select corps of militia, in which light they appear to have been considered by the amendatory act passed on this subject, which declares that after their services are accepted by the president, that they shall be exempted from militia duty in other corps; the power given to the president by the bill to appoint their commissioned officers, violates that part of the constitution, which "*reserves to the states respectively the appointment of the militia officers*." The constitution also gives power to congress "to provide and maintain a navy;" but they have

have authorized the president to accept by way of loan, of any number of ships that may be offered to him. The constitution has also given power to congress "to borrow money on the credit of the United States;" but they have given the president power to borrow 5,000,000 of dollars without any limitation as to the amount of the interest to be paid on the loan. Thus, congress have by these different acts, to the degree, that I have stated, transferred the power over the purse and the sword vested in them by the constitution, to the president; and if a power over the purse and the sword, has always been properly considered as including within it all other powers; and if this power to the extent to which it hath been now given to the president, hath already, as you suppose, produced forty ships of war, and 90,000 volunteers; and will also shortly procure more than 10,000 regulars, all officered by chosen spirits selected by the president himself, and dependant on him for their continuance in office; I beseech you, to inform me on what it is that you found your opinion, that "our liberties are not in danger." So far from my being able to concur with you in this way of thinking, after the most serious reflections on the subject, I am clearly of opinion, that if the real difference between our government, as fixed by our constitution, and an absolute government could be ascertained; it would be found, that those who have administered our government, have already by their different violations of the constitution, and of the republican principles on which it is founded, done away and destroyed, much the greater and most powerful part, of the guards to liberty, which are contained in that constitution; and which originally constituted the essential difference between our government and a despotic government. And that if they have, in so short a time, with the means which they then had in their power, and when they were opposed by *all* the constitutional barriers, been able to effect so much, that it will not now require any great effort on their part, to remove the remaining difference between the two governments; when their means of attack are increased in a twenty-fold degree, and when the principal constitutional barriers are already laid prostrate at their feet: unless the people of America, will rally around their constitution, for its protection.

You say also "the alien law you wish to be made perpetual." My knowledge of you convinces me, that you will recal that wish, if I can satisfy you, that this law violates the constitution, by exercising a power not delegated to congress by the constitution, and by infringing an authority which prior to the constitution was vested in the state governments, and which the constitution still reserved to them; that it violates the rights secured to alien friends, by the constitutions of the federal as well as of the state governments; that it is impolitic; and that it is unjust and unnecessary. You know that this act concerns *alien friends* only, there being another special act of congress, directing what shall be done with *alien enemies*; this will render it unnecessary in the discussion of this question to take any notice, of the doctrine concerning alien enemies. To understand the constitutional powers of congress on

this subject, we should recollect the state in which this business was, prior to the adoption of the constitution, and then ascertain the change which was made in it by that constitution. Prior to the adoption of the constitution, the people inhabiting the different states might have been divided into two classes; natural born citizens, or those born within the state, and aliens or such as were born out of it. The first by their birth-right became entitled to all the privileges of citizens; the second were entitled to none, but such as were held out and given by the laws of the respective states, prior to their emigrating to them. I say by the laws that were in force prior to their emigrating to the state; because although each state, as a sovereign and independent state, had an unquestionable right to declare, on what terms strangers should be permitted to come into the state, and what privileges they should be entitled to after they had emigrated to the state; these terms after a stranger had in consequence of their being offered to him, actually removed to the state, constituted a compact between him and the state, which could no more be changed by one party to it without the consent of the other, than any other compact can be so altered. But still the state had a right to change those terms whenever it adjudged it proper to do so, as to all future emigrants. The laws, then, of each state must be resorted to, to ascertain what were the privileges granted to emigrants and upon what terms and at what time they were entitled to those privileges. In this state and in Virginia the privileges of alien friends depended on the constitution of each state, the acts of its legislature, and the common law; by these they were considered, according to the time of their residence, and their having complied with certain requisites pointed out by these laws, either as *denizens* or *naturalized* citizens. As denizens, "they were placed in a kind of middle state between aliens and natural born citizens;" by naturalization, they were put exactly in the same condition that they would have been, if they had been born within the state, except as far as was specially excepted by the laws of each state. The degree of privilege to which each class of aliens was entitled was different, but the claim of each to the privileges annexed by the law to his class, was equally well established; and the one could no more, with justice, or by law, be deprived of his inferior privileges, than the other could of his more extensive ones. And as far as these privileges did extend, they both had the same legal claim to them, that the natural born citizen had to his privilege. Like the natural born citizen, they both owed allegiance to the state, were equally liable to be punished for offences against it, and were equally entitled to the protection of the laws, to security against oppression, and to every legal means, of self-justification, when attacked by the process of law. The distinction between these two classes of aliens was not only known to, and established by law, but each class had a particular name affixed to it by law—the law denominating one of them denizens, the other naturalized citizens; and the common law had affixed such distinct and appropriate ideas to the terms denization and naturalization, that they cannot be confounded together.

or mistaken for each other, in any legal transaction whatever. They were so absolutely distinct in their natures, that in England the rights they convey cannot both be given by the same power; the king can make denizens, but nothing but an act of parliament can make a naturalized subject; and although the powers which belong to both king and parliament, under the English government, were vested in the state governments at the revolution, still they have always been considered as distinct powers, and as such exercised by granting the different degrees of privileges, upon the different terms specified by law, as qualifications necessary to entitle each class of alien friends to the privileges annexed to that class: and the legal distinction between them and the appropriate meaning given to the name, by which each class was distinguished, continued to be recognized by the laws of the states in the same manner that it was in England; as may be fully proved by the act of the Virginia legislature "to naturalize the marquis Fayette." This was the legal state of this subject in Virginia when the federal constitution was adopted; it declares, that "congress should have power to establish an uniform rule of *naturalization* throughout the United States;" but it also further declares, that "the powers not delegated by the constitution to the United States, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The power of naturalization, and not that of denization being then *delegated* to congress, and the power of denization, not being *prohibited* to the states by the constitution, that power ought not to be considered as being given to congress by the constitution, but, on the contrary, as being *reserved* to the states. As the words do not give this power, neither does it come within the reason on which the other power was given. The constitution declares, that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states;" if therefore, the power of naturalization had been left in the respective states, this consequence would have followed: they might have established different rules; and a man who could not have been naturalized by the law of Virginia, might have been naturalized by the law of Maryland; and then, as a citizen of Maryland, he would have been entitled to all the privileges and immunities of a citizen of Virginia. It was, therefore, absolutely necessary to prevent this inconvenience, and the evils which would necessarily grow out of it, to vest congress with the exclusive power of naturalization; as by this means no man could be admitted as a *naturalized citizen* of one state, by any qualification different from that which would be required in any other state. But this reason did not apply to the right of *denization*, because this did not make a citizen of an alien, but only placed him in a middle state, between the two; and because it only gave him local privileges, which he was so far from being entitled to carry with him into another state, that he actually lost them by his removal from the state giving them. And although the individual states might, for the reasons assigned, have been willing to give up to congress the power of naturalization, it would have been very dangerous and impolitic to put it in the power

power of a majority of the states in the union, to prohibit emigration to the other states. The ninth section of the first article, and the fifth article of the constitution, prove beyond contradiction, that the constitution so far from intending to give to congress any other power on this subject, but that which it does expressly give to that body, "to establish an uniform rule of naturalization," has expressly forbid such a power being given them, even by an amendment to the constitution, prior to the year 1808 : and therefore must prove also that this act is unconstitutional. But admitting, for argument sake, that congress had a right to legislate on this subject, I conceive that the act which they have passed respecting it, is unconstitutional, from the nature of the provisions contained in the act. If they had a right given them by the constitution to legislate on this subject, it could be no greater right than was before vested in the state governments : and the state laws which had been passed respecting it prior to the adoption of that constitution, were unquestionably in force until congress did legislate concerning it ; and all the terms held out by those laws, were binding on the United States, as to all who had emigrated here prior to the first act of legislation by congress, respecting it. If those state laws are examined, it will be found, that every security which is given to a natural born citizen, for the enjoyment of his privileges, is also given to all alien friends for the enjoyment of their's : and that those laws were so far from intending to deprive persons in their situation, of any privilege which would prevent them from having as full and as fair trials as natural born citizens were entitled to, that they have in certain cases, allowed them to claim privileges in our courts (such as that their jury should consist of half foreigners) which were allowed to no other persons ; and the federal constitution also declares that in *all* criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by jury ; and that the trial of *all* crimes shall be by jury. We find in these clauses no terms of restriction which can confine their operation, or the privileges they were intended to grant, to any particular persons ; on the contrary, the expressions used in the constitution, are as general as they could have been, such as, *no* person, in *all* criminal prosecutions, *all* crimes, &c..

Suppose an alien who had resided here many years under the protection of the state, the laws, and in the enjoyment of the privileges given him by those laws, without having been naturalized under the law of the United States, was to be prosecuted for treason ; would he be tried by a jury ? Certainly he would. If so, it would be because the law directs that this shall be the case ; for there can be but one legal mode of trial, no discretionary power having been vested in any court, to prescribe or alter the mode which shall be pursued. If this is the legal mode of trial, it is the privilege of the alien to have it followed, and in a prosecution for treason, he could not be legally deprived of it. And if this would be his privilege in a prosecution for treason, although he had never been naturalized, the constitution secures it to him equally in all other cases, where accusations

accusations are brought against him ; because it declares, that, “ in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury, of the state and district, wherein the crime shall have been committed ; which district shall have been previously ascertained by law ; and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favour ; and to have the assistance of counsel for his defence.

Considering this punishment of banishment, as a novelty in our law, it is for that reason also unconstitutional ; because the constitution declares that “ cruel and unusual punishments shall not be inflicted.” And although this law directs this punishment to be inflicted on alien friends only, if the principle is once admitted to be a constitutional one, it will soon be extended to natives also : and then the best of our patriots, would, under new-fangled charges of sedition, be sent to Botany Bay, to lament the general downfall of liberty, with the British patriots, who have been already exiled there, under sentences given on similar charges.

This act is also unconstitutional, because the constitution declares, that “ the judicial power of the United States, shall be vested in courts, to be established by congress, the judges of which shall hold their offices during good behaviour,” whereas this act gives the president power, to judge and determine in this case ; if that deserves to be called a judgment which is given without a trial of any kind, and on suspicion only.

If then the aliens who came to this country in consequence of the legal assurances they had received, that they should enjoy certain privileges ; that they, in common with all others residing here, should be protected in the enjoyment of all their just privileges ; that they should never forfeit them but in consequence of their own improper conduct, and not then, until the charge against them had been established before a proper tribunal, after a full, fair, and legal investigation of that charge ; I must be warranted in saying, that this law is unconstitutional, because it puts it in the power of the president to banish them, a punishment hitherto unknown to our laws, and now confined to them alone, and that upon suspicion only, and, without a previous trial of any kind. That this act is impolitic, no man can doubt, who knows the extent of the present uncultivated tracts of country in the United States. Until within a very short period, it has been universally admitted as a truth, that there was no line of policy so important to us, as the encouraging of emigration : as a proof of it, the declaration of independence states it as one of our charges against the tyrant George the third, “ that he endeavoured to prevent the population of these states ; for that purpose, obstructing the laws for the naturalization of foreigners ; refusing to pass others, to encourage their migration hither, and raising the conditions of new appropriations of land :” and yet, how much did this misconduct of his fall short in its bad consequences, of that which puts it in the power of the president to banish, upon suspicion only, those who have emigrated, or shall emigrate to this country.

country. What man who can exist in any other country, would remove to this, knowing that he was to be subject to such a despotism? This law is so unjust, as well as so obviously impolitic, that it furnishes the strongest presumptive evidence, that the true reasons for passing it, have not been avowed by the favourers of it. It is impossible that any well grounded fears could exist as to a few strangers in America; especially as they were liable to be restrained and punished, by the same laws which are considered as sufficient to control all other evil minded persons, although aided by wealth, and numerous acquaintances and connexions. The true way to remove all danger from emigrants, is, instead of restraining emigration, to make it as general as possible. In religion, a general toleration, prevents danger from any one sect, as all the others would unite against one, which should attempt to act improperly. So it would happen, if emigrants from every quarter of the globe were admitted to America. The danger apprehended from them, is, that notwithstanding their removal to this country, they would still retain a stronger attachment to their native land, than to America: although the truth of this position might well be doubted, from the reason of the thing, when applied to men who voluntarily left the one country from disgust, to remove to the other, to which they gave a preference; and to men, whose future prospects, both for themselves and their posterity, would all depend on the prosperity of that country to which they had removed; and although the general conduct of the natives of the British dominions who then resided in America, proved the contrary in our war with that nation: I will for argument sake, admit it to be true in its fullest extent, and yet I should conclude, that no danger could arise from it: provided these emigrants would prefer America to any other country but their own. This would certainly happen, as well from that predilection to America which brought them here, as from the antipathy which generally prevails between the citizens of the different countries in Europe: for then, in case of a rupture between America and any one nation of Europe, besides her own natural born citizens, she would be aided to the utmost, by all the emigrants from every part of the world, except that particular nation. This is also fully verified by the conduct of foreigners in general, residing in America, in our present contest with France. So that instead of emigrants weakening America in time of war, she would, by their means, gain as much additional strength, as their total number would exceed the whole number from that nation with which she was at war: and the emigrants even from that country, would be restrained from "adhering to their former countrymen, or from giving them aid or comfort," by the penalties annexed to treason, which such conduct would subject them to. Perhaps it might have been hoped and expected by the friends of this bill, that a law of this kind would make all the persons coming within its descriptions, perfectly subservient to the will of the president: this idea is confirmed by an address from a number of aliens in Albany, in which they pledge themselves, by every exertion that can be made both with their persons

sons and property, to support *all* the measures of government ; in answer to which, they are told by the president, that as long as they do act up to their promise, by supporting by every means in their power *all* the acts of the government, that they shall be treated with *hospitality*. Perhaps also, a knowledge of human nature, might have convinced the framers of this bill, that the absolute power which it gives the president over those coming within its provisions, would enable him to dictate also to all their connexions, friends, and acquaintances, who would not wish to see them banished from the country, and all that they held most dear. But, if the policy of party extended its views still further, and from a knowledge of the existing convulsions in Europe, and the causes which have produced them, wished to put it in the power of the president, to discourage and prevent all who are engaged *there* in struggles for liberty, from emigrating to America, if they are unsuccessful at home ; at the same time that the door was left open, to receive all the abettors of tyranny, if they failed in their present contests : this act may, in its operations go a great way towards contaminating and destroying those republican principles which now exist in America, and which are the only real support of our present constitution. Whatever effect these suggestions may have on your judgment, I flatter myself that I must have proved to your satisfaction, that this act is *unconstitutional, unjust, impolitic and unnecessary*.

You say " we think that no words can justify sedition under a constitution formed as a basis of government amongst a civilized people. We submit with cheerfulness to laws *regularly* enacted by a great majority of our rulers."

It is not necessary for us to enquire whether the authors of false and malicious publications, which the law denominates libels, ought to be made punishable by law ; because they have always been liable to such punishment. The question is, have congress a right to pass a law on that subject, and under the pretext of providing a punishment for that offence, which the laws of the different states had before sufficiently provided, to destroy the liberty of the press, contrary to an express prohibition contained in the federal constitution ?—Seditious writings do not constitute the only, or the greatest offence which can be committed against the community ; why, then has not congress provided punishment for the others ? Certainly, for this reason, because they had no constitutional power *given them* to pass such laws. There is the same reason against their passing laws on this subject, with this additional one, that the constitution expressly declares, that " they shall pass *no* law abridging the freedom of the press." If it is asked where is the injury arising from this law, if there were other laws on the same subject existing in the different states, prior to the passage of this law ? I answer, that the wrong consists in their assuming to themselves, a power to legislate on a subject, not only not entrusted to them, but absolutely forbid them, by the constitution ; that if this is once allowed, the only barriers contained in the constitution for the security

of liberty, will be destroyed; and that this law ought to be considered, not as the final regulation which is intended to be made on this subject, but as an experiment only, to try the temper of the people; and as the forerunner of other acts that would soon be passed respecting it, upon a much more extensive scale, if this is submitted to. If any man doubts that this would be the case, let him examine the infamous sedition bill passed by the senate, which destroyed the liberty of speech, as well as the freedom of the press—a bill which was altered in the house of representatives, so as to bring it into its present shape, only by a very small majority. But, even that bill was not more unconstitutional, than the one which was actually passed, because the constitution gives no other security for the enjoyment of one of these privileges, than it does for the other; and they might, also, at the same time, as constitutionally, have attacked religious liberty; because that also depends on the same clause in the constitution, which is in these words: “Congress shall make *no law* respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” But it is argued by the friends of the law, that if similar laws do now exist in the different states, that this law does not *abridge* the freedom of the press, and, therefore, is no violation of the constitution. This, by no means, follows as a consequence, for although the state legislatures may have constitutionally passed laws on this subject, under the powers given to them by the state constitutions, yet congress could have no right to pass such laws, when the federal constitution declares that they shall pass *no laws* respecting it. The prohibition contained in the federal constitution is, *that congress shall not exercise this power at all*, but leaves the power, as it stood before, in the state governments; and the laws existing in the state governments, rendered the passing of such a law by congress altogether unnecessary. Because, as seditious writings were forbid and punishable by the laws of every state, and as no officer of the general government lost the protection of the state laws by going into office, he would have the same right to apply to a court under the state laws, for redress of any injury of this kind that any other citizen would have. Besides, the remedies given by this act are public prosecutions, and it has been solemnly determined in common law courts, that a libel against an official character, belonging even to a foreign country, is cognizable and punishable in those courts: there can be no doubt, therefore, but that a libel against an officer of the general government, which is so immediately connected with the state governments, as to be in some respects the government of each state also, and whose constitutional acts are the supreme law in each state, would also be cognizable in the state courts. This argument may also be strongly illustrated in another way—“the United States, in their united or collective capacity, are the objects to which all general provisions in the constitution must refer.” Now, it is evident, that though restrictions on the freedom

of the press, with various limitations, are known in each state, individually, yet in the United States, *as such*, no such restriction was known, prior to the adoption of that constitution; when, therefore, the constitution declares, that congress shall pass no law abridging the freedom of the press, it must mean, that they should establish no legal restriction whatever on it; because any restriction, however small, when imposed by them, would be *abridging* the freedom of the press in the United States, *as such*, as no restriction by them, had ever existed prior to that time. If this clause receives the construction that I contend for, it has an important and forcible meaning—that congress shall not legislate at all upon this subject, and leaves it with the mass of powers, which were reserved to the state governments; but if it is construed to have reference to the restrictions imposed by the state governments on the freedom of the press, by authorising congress to impose similar ones, it is nugatory; because it would make the extent of their power depend on the state regulations, on this subject; and would make their laws change and fluctuate, with all the alterations that would be made by the states respecting it; and it would be void also, for its uncertainty, because, as the restrictions are different in the several states, and as the laws of no particular states are declared to be the criterions which should regulate the conduct of congress on this subject, any law they could pass respecting it, would “abridge the freedom of the press,” in some of the states, although it might not do it in others. Unfortunately for the favourers of this doctrine, their oracle, Hamilton, has reasoned against it in the most conclusive manner, when proving that a bill of rights was not only unnecessary, but that it would have been even dangerous: He says—“I go further, that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers which are not granted; and on this very account, would afford a *colorable pretext*, to claim more than were granted. For, why declare that things shall not be done, which there is no power to do? Why, for instance, should it be said, that the liberty of the press *shall not be restrained*, when no power is given by which restrictions may be imposed? *I will not contend that such a provision would confer a regulating power*, but it is evident, that it would furnish, to men disposed to usurp, a *plausible pretence for claiming that power*. They might urge, with a semblance of reason, that the constitution ought not to be charged with the absurdity, of providing against the abuse of an authority, which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it, was intended to be vested in the national government. This may serve, as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.” This reasoning of his, is also a sufficient answer to the argument which they draw, from this prohibition on the power of congress, being contained in an *amend-*

ment to the constitution ; which, as they suppose, is an admission by implication, that the constitution itself did give a power to abridge the liberty of the press. This argument may also receive several other satisfactory answers. Suppose this reasoning was just, would it not follow, that after the amendment had taken place, by which a change had been made in the power given to congress in this respect by the constitution, that that power, as far as it was inconsistent with the amendment, would be as effectually done away, as if it had never been given by the constitution ; and as the amendment says they shall pass *no law* abridging the freedom of the press, it certainly does it away entirely. Besides, the preamble to the amendments states, that “the conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent a misconstruction or abuse of its powers, that further *declaratory and restrictive* clauses should be added—and as extending the ground of public confidence in the government, will best ensure the beneficent ends of its institution :”—Considering then this particular clause in the amendment, as being either *declaratory or restrictive*, it would be contrary to common sense, as well as every rule of legal construction, to make this clause, which also in itself contains the strongest *prohibition* against the exercise of such a power, amount to an authority to exercise it. Further, admit that this amendment does prove in the fullest manner, that the constitution did give congress such a power, yet as they had never, prior to the adoption of that amendment, really exercised that power, the amendment does away that power as effectually, as if it had never existed at all. For, as the liberty of the press was not actually abridged, although congress had a power under the constitution to abridge it, until they had actually exercised that power ; congress could not, after the adoption of the amendment, pass any law on that subject, because that law would then, *as to the United States*, for the first time, have “ abridged the freedom of the press,” which the amendment declares, that no law of their’s shall do. Another strong argument, that the constitution did not intend to give, and that the amendment did mean to prohibit altogether, the power of making laws on this subject, is that no checks are to be found in either, similar to those contained in the bills of rights in the several state constitutions, guarding this power against abuse. But, even this bill admits that every such law ought to be guarded against an abuse of the power which it gives ; did the framers of this constitution then intend to leave it to the pleasure and patriotism of Harper and Otis, and, the other friends to arbitrary power, either to guard their bills of this kind properly, or to send them out unshackled, that they might the better effect their purpose of inspiring terror.

The advocates of this bill give it great merit, because it declares, that in every prosecution founded on it, the defendant shall be at liberty, “ to give in evidence, in his defence, the truth of the matter contained in the publication charged as a libel.” I can never acknowledge the justice of a thief, who restores to a man he has robbed, a part only

only of what he has taken from him ; but, if I understand this bill, this clause so far from restoring any thing, which had been before taken away ; that it adds mockery to oppression. In some cases, the privilege of giving the truth of the charge in evidence, on a prosecution for a libel, would be important ; if, for instance, A. was to publish in writing, that B. was a horse thief, and had stolen his horse ; if A. was indicted for this as a libel, it would be of great importance, and a complete jurisdiction to him, if B. was really guilty of the charge, to be allowed to give the truth of it in evidence. But in the prosecutions contemplated and authorised by this act, this would, in ninety-nine cases out of an hundred, be no privilege at all. This act declares, that “ if any person shall publish any false, scandalous, or malicious writing against either house of the congress of the United States, or the president of the United States, with intent to defame or bring them or either of them into contempt or disrepute, or to excite against them or either of them the hatred of the good people of the United States, that he shall be punished by fine and imprisonment.” Now, it must be obvious that very few charges that will be brought against either house of congress, or the president, will be founded on a single or a simple fact, which will be capable of being proved by testimony, as might be done in the case already put, of a charge brought against a man for stealing a horse.

All political writings contain not only facts, but also reasoning and deductions drawn from those facts ; and the object of the writer, must generally be illustrated by the reasoning and deductions drawn from the facts, and not from the facts themselves : and the libel, if it is one, will consist generally, in what is contained in that reasoning and those deductions, and not in the facts. But evidence can be given only of the truth of facts, and no testimony can be brought to prove, the truth of the opinions stated as arising out of those facts. The consequence therefore must be, either that A. will be found guilty of the charge brought against him, because he does not prove the truth of that which is incapable of being proved ; or, that he will be found guilty or acquitted, according to the political sentiments of his jury : upon the same charge, a jury of republicans would acquit him—a jury of aristocrats would condemn him.—A. would be acquitted to day, and B. condemned to-morrow, for the same publication. Can this be right? if it is not, does it not prove unquestionably, that this pretended privilege is a delusion only? I will illustrate this reasoning by two examples ; suppose A. was to publish in writing, that the president had by his writings declared his approbation and esteem of monarchical governments ; and his disapprobation of and dislike to, republican principles ; and was to argue from thence that he was unworthy of the confidence of a people, living under and attached to, a republican government : and was also to assert, that the sedition bill was a violation of the constitution in a very plain instance ; and was then to argue, that all who had been concerned in the passing of it had violated that constitution, and by doing so, had also violated their oaths, by
which

which they were bound to support that constitution. If A. was tried for this publication, he might prove by the president's writings and the sedition bill, that what he said as to them was true; but how could he prove, that the inferences that he drew from them—that the president was unworthy of public confidence, and that all concerned in passing the sedition bill had wilfully violated the constitution and their oaths, was true also? Neither could he be proved by testimony, and yet as a freeman A. had a right to form this opinion; and the opinion itself being founded on facts, he had a right to communicate it to his fellow citizens, to prevent them, from placing an improper confidence a second time in these men. But for this opinion A. would be either applauded or condemned by a jury, according to their private political sentiments. This law then, in the first place, declares it to be an offence to publish a writing, the truth of which is from its nature incapable of being proved; and then graciously adds, that before you are convicted of this offence, you may, if you please, make an attempt to prove the truth of the charge, although that attempt, when made, must be ineffectual; because it is to do a thing which is impossible to be done. If the writer's condemnation or acquittal is to depend on the political opinion of a jury, collected in a country rent into political factions, and selected by an officer under the absolute influence and control of his prosecutors and enemies, will it not put a total stop to all political writings, but those in favour of the measures of government: and how long will even the shadow of liberty remain, after the door of information is, by that means, effectually barred against the body of the people?

So far from it's being right to abridge the freedom of speech or of the press, when it is exercised to censure the measures of government; it is the only time, when it is necessary to protect either of them. As long as the speaker or writer approves of their measures, he may not only proceed with safety, but he will be thanked and paid for it. If he praises handsomely, he will be taken into favour—if he desires the object of his flattery, he will confess that he has "melted his heart." It is said that a pleasing song has been paid for with an office; that many have been given as rewards for addresses: and that more than one have been taken from those who refused to become addressers.

What has been said must prove that the liberty of the press ought to be left where the constitution has placed it, without any power in congress to abridge it; that if they can abridge it, they will destroy it; and that whenever that falls, all our liberties must fall with it. I cannot close this part of the subject better, than by copying what was said respecting it, by our late envoys; their expressions on this occasion are so just and forcible, as to give real cause to lament that their abilities *are not oftener exerted* in illustrating and enforcing republican principles. They say "the genius of the constitution and the opinions of the people of the United States, cannot be overruled by those who administer the government." Among those principles deemed sacred in America; among those sacred rights considered

dered as forming the bulwark of their liberty, which the government contemplates with *awful reverence*, and would approach only with the most *cautious circumspection*, there is none, of which the importance is more deeply impressed on the public mind, than the liberty of the press. That this liberty is often carried to excess, that it has sometimes degenerated to licentiousness, is seen and lamented; but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied: perhaps it is a shoot which cannot be stripped from the stalk, *without wounding vitally the plant from which it is torn.*"

Do you not discover, how materially the language of many of the warmest advocates of the measures of government, has been changed, respecting these bills. When they were first enacted, they were the causes of great joy and triumph, to the whole party; and the most zealous amongst them, insulted, bullied and threatened all who would not admit that they were both *constitutional and necessary*; and every art and argument were used, to bring the people into this way of thinking; and notwithstanding they had been opposed by nearly one half of the house of representatives, were disliked by a great majority of the people of America, and were considered as unconstitutional, by great numbers who had always been among the warmest supporters of the government; many of the most influential characters in the government party, took every opportunity to express their contempt, for all who disapproved of them; and the officers of government, to irritate them as much as possible, gave the title of these bills as names, to two of the public armed vessels; calling one "the Sedition act cutter," and the other "the Alien law smack."* But having failed in all their attempts, either to bully or convince the people; and finding that they were determined not to entrust their liberties to those who advocated these bills; they now admit, that these bills were impolitic, because they were useless; and because they were calculated to create unnecessary discontents and jealousies among us. But still these men do not acknowledge, that they are unconstitutional; and therefore, if they have it in their power so to do, they must, to be consistent with themselves, vote for similar bills, whenever they may suppose, that they will be *expedient*. The people who oppose these bills on the ground of their being unconstitutional, ought never to vote for men, who are opposed to them, only because they consider them as being *inexpedient at this time*. It is also extraordinary, that these men who declare that they consider these bills as useless and impolitic, are against the repeal of them; upon a supposition, that an effort to repeal them, would irritate men's minds to such a degree, as to baffle the opposition to the attempt that they suppose will be made by the government party for their revival, after the term for which they are now in force shall expire. So that, the policy of these gentlemen amounts to this; it will be expedient, to let these bills, which they acknowledge to be

* We apprehend that the author has mistaken a punning paragraph in the (Boston) *Centinel*, replete with the *federal wit* of the editorial major, for a fact, which has led him into this erroneous assertion.

useless and impolitic, and which nine-tenths of the people believe to be dangerous and unconstitutional; continue in force two years longer, for fear of irritating and offending those, who by their voting for and patronizing these bills, have already proved themselves to be enemies to our constitution and liberties. Away with reasoning of this kind; intelligent freemen cannot be deceived by it; they will discover that it is an electioneering trick; that it is intended to put them off their guard, and to induce them to trust their liberties in the hands of men who, even if they are honest in their declarations, differ with them in opinion as to the true meaning of some of the most important parts of our constitution; and who from their own acknowledgments, must be bound in conscience, to vote for similar bills, *whenever* they shall judge it *expedient* to do so. The private virtues of such men ought to be no inducement with the people to elect them, as they will cause them to persevere in opinions, which the people consider as dangerous and destructive; and in those cases, their superior talents, instead of being a public benefit, will only enable them, to spread the poison contained in their opinions, the more diffusively. A promise on the part of a representative, to obey the instructions of his constituents, is no security to them, when they differ from him as to important political principles. Instructions must go to specified objects, but after they are obeyed as to those objects, the obnoxious principle which was contained in them, may be thrown into another shape, and then the representative may consider himself as being at liberty to follow his own inclinations. If therefore, the alien and sedition bills were repealed in consequence of instructions; and not because those who voted for their repeal thought them unconstitutional; the same principles might afterwards be approved of by the representatives, in other bills, before their constituents would have an opportunity of instructing them, as to them also; and thus there would be an eternal war, between the principles and acts of the representative, and the wishes and interest of his constituents. The only real security that can be given to the people, that their interest and principles will always be duly attended to by their representatives, must arise from their placing that trust in no man who does not possess both an interest and principles similar to their own. All true patriots should unite in declaring these bills to be *political monsters*, and in demanding that they shall be put out of existence, as soon as it can be done constitutionally: and to prevent other bills of a similar nature, from rising out of their ashes, they should vote for no man who will not unequivocally declare that congress have no constitutional power to pass such bills, under any possible state of things.

But you declare that "you are satisfied with these laws, because they have been regularly enacted by a great majority of our rulers." You are certainly mistaken, as to the fact of their having been passed by a great majority. These bills as well as several other very important measures, were adopted by very small majorities; which circumstance, alone, ought to have been sufficient with moderate men, to have prevented their voting for them; because in a free

country, radical changes, even if constitutional, ought not to be made, but by general consent. As to the regularity of their passage, I have not enquired into it; but if they had no right to pass such acts, the observance of no forms in the passing of them, could make them constitutional when passed: the most wretched of all governments, is that, where the form of it is retained, after the substance is lost: this I take to be the present situation of the British government, and is the true reason why their king is now the most absolute monarch on earth.

You say, "we hope to see a force *raised* sufficient to keep peace at home, and awe all foreign powers." If I understand this properly, it amounts, not only to a wish to see a standing army, but also to have one of the largest size; because no other kind could possibly "awe all foreign powers." This, then, is another improvement, which has lately been introduced into our political system; our old patriots considered standing armies, as the most powerful engines of arbitrary power, and the most dangerous enemies to republican governments; but, our modern patriots have discovered, that this was an error, and that a large standing army is a necessary ingredient in a good republican government; although they sometimes inform us, also, that France has, within five years, lost her liberty by the means of one, and that she is now governed by a military despotism. I have read, without emotion, the arguments which have been used in a hireling paper, and by the tools of party in congress, to prove the necessity of having a large standing army, to keep in awe the free citizens of our republican government; because I despised them, as well as their arguments: but, to see those arguments now repeated, by the pen of a real and well informed patriot, makes me shudder. Look at the public declarations of '76, in which you concurred—see how different the sentiments they contain, are, from what you now avow; and then inform me of the cause of the change. It cannot proceed from any apprehensions entertained of internal commotions upon the present occasion, because you declare, that "the unanimity of the people of America is astonishing; and that Kentucky is the only discontented state in the union." I beseech you, my friend, reconsider this subject, and do not put it in the power of the friends of arbitrary power, to quote your opinion as an authority, in favour of one of their most *damnable* doctrines.

You say, "We entertain not any apprehensions of danger from the French, and the Spauiard, the cowardly Spaniard, is too much afraid of us, to give us the least insult in future, however great a favourite he may be in Kentucky." From the obvious meaning of the whole of this sentence, I apprehend, that you have taken up improper ideas of the opinions, views and designs of the people in this country. I will endeavour to give you a true representation of all of them, as far as they have come to my knowledge.

First—as to our dispute with France. We think that our government gave the first real cause of offence to the French nation; that the French have carried their resentment of this injury, to a
very

very unjustifiable length; that our government did not make use of the best, or the most likely means, to heal the breach in the friendship between the two nations; nay, that the steps which they have taken, have had a manifest tendency to widen that breach; that peace might still be obtained, if it was properly sought after, although the French have now made very improper and unjustifiable demands on America; and although there is reason to suppose, that they have also *now* formed some improper views as to us. We lament that any just cause of offence was given to that nation—we recollect with concern that effectual means were not used to bring about a reconciliation with her, and that all attempts at a reconciliation are now laid aside—we rejoice that her improper demands were rejected—and we think that effectual defensive measures ought to be taken, to guard us against any improper designs that she may now have formed respecting us—but we do not think, that any thing that has happened, could justify our government to their own country, either in commencing or precipitating a war between the two nations—and that even an actual state of war, would not have justified those measures of their's, which I have already observed on; because they exceeded their constitutional powers, and because their evident tendency was, by dividing, to weaken us. As to the Spaniards—so far from our feeling any predilection for that nation, we have, until lately, been accustomed to view her with very unfriendly eyes; but our resentment against her has ceased entirely, since she has done us justice; and we now wish, to keep up with her, that friendly and liberal commercial intercourse, which is so obviously to the interest of both countries—but we wish to form no other connexion whatsoever with her. In short, we have no improper attachments to any foreign nation—we are true Americans, having no political objects in view, but the welfare, independence and liberty of our country. And if the time shall really come that they are attacked, by any foreign nation, we will give the lie to those who now slander us—not by presenting “loyal and dutiful addresses”—nor by soliciting for lucrative commissions—nor by enrolling ourselves in the corps of volunteers, which from their having been unconstitutionally raised and officered, there is every reason to suppose are intended to be used for the worst of purposes—but by turning out as freemen and militia (the only natural, safe and constitutional defenders of their country) to protect and defend all that we hold most dear.

We have been repeatedly informed, that it has been reported in the other states, that it is our wish and intention to separate from the union. I cannot give you any better information on this subject, than is contained in an address from me to the citizens of Kentucky, from which the following is an extract.

“It has been currently reported and vehemently asserted, that those persons who have in this state, declared their disapprobation of some of the late measures of the general government, are actuated by a wish and a design, to destroy the constitution and the union of the United States. This is a charge of an important nature, and therefore ought to be supported by sufficient testimony.

Proof

Proof is particularly requisite to support such a charge ; because, from the nature of it, it cannot be contradicted by positive proof, as a false charge as to men's actions may generally be. Men's objects and views are locked up in their own breasts, and can be fully known only to themselves ; but still such circumstances may be collected from their declarations, their situation, or their conduct, as will go a great way in explaining what their views really are. Some such proofs ought, therefore, always to be given, to support a charge of evil designs. But no proof of any kind is brought to support this charge ; it rests altogether on the assertion of those making it ; an assertion, proceeding from malice, and made to answer the views of party. The situation of those against whom the charge is brought, affords the strongest presumptive evidence against the truth of that charge. We are citizens of this country, *have our all here*, and consider it as the permanent residence, for ourselves and our posterity, That which will be to the lasting and ultimate interest of this country, must be our interest also. Will those who bring this charge against us, say, that it will be to the interest of this state, to separate from the other states in the union ? They certainly will not. How then does it happen, that we would wish to see an event take place contrary to the true interest of our country, when our private interest must in that respect be inseparable from that of the state at large. Is this interest of a doubtful nature, or are we alone such fools as not to be able to distinguish it, although there has been no difference of sentiment on that subject, in any other part of America, for upwards of twenty years ? If I understand the nature of the charge, it is not founded on a supposition that we have not understanding sufficient to enable us to comprehend what the real interest of our country is ; but that we are wicked enough to wish to sacrifice that interest, to our supposed private views. But, before we ought to be suspected of having sinned intentionally, it should be shown that we had some temptation to commit that sin. I ask then, what are those private views which are supposed to have influenced our conduct ; and what are the personal advantages which could be expected by rational men situated as we are, which could be sufficient to compensate us for the ruin and destruction which would certainly be brought upon our country and posterity, by the adoption of such a measure. Can the wisest man amongst us foresee, if a separation should take place, what would be our political situation ? If he cannot, how can he ascertain that that separation would promote his private views ? And would any man in his senses, wish to see such an attempt made, with all its attendant dangers, unless he saw clearly that if it succeeded, it would certainly procure him great private advantages ? He certainly would not. If then no sufficient reason can be suggested from our present situation, or from our future prospects, why we should be supposed to wish to see a separation take place ; have we justified the charge which has been brought against us, by any declaration that this is our wish ? Examine our public declarations on this subject, they uniformly hold a different language, and those

those declarations are acknowledged to be in strict conformity to our interest ; they ought, therefore to be considered as expressing our true sentiments, until some sufficient evidence is given to prove the contrary. If our private declarations have contradicted those which we have made in public, let it be proved, and I will then agree, that there is sufficient reason to believe that our public declarations are deceitful ; but until some proof of this kind is brought, it ought to be supposed, both from our real interest and our public declarations, that we really are warmly attached both to the constitution and the union of the United States. Nothing can more justly bring discredit upon accusers of any kind, than their naming one set of persons as being guilty of the charge, at one time and place ; and a different set at another time and place. This is exactly the situation of our accusers, upon this occasion. When this charge is brought forward in this state, it is confined to a few, and it is unequivocally declared, that the body of the people are innocent of it ; but when it is mentioned in any other state, the charge is then extended to the state at large : From this it appears that there is a double object in making this false charge, first to deceive the bulk of the people in this state, as to the views of a part of their fellow citizens ; and then to give the inhabitants of the other states false impressions as to the real objects of the people at large in this state : and to answer the real object of the charge, which is to deceive whenever it is made, it is necessary to confine it to a few, when it is stated here, and to make it general when it is exhibited in the other states. To give this charge some colour of truth, when they find that they can adduce no testimony to support it, those who make it, say, that unless we are actuated by such a design as they falsely attribute to us, that no sufficient cause can be assigned for our present political conduct. Great, indeed, must have been the change which has taken place in the sentiments of the people of America, if they cannot see a sufficient cause for our present conduct, in the belief which is strongly impressed on our minds, that our liberties, and the constitution of our country are in danger : although they may not see these things in the same point of view that we do, they certainly ought to acknowledge, that as long as we are under the influence of these impressions, that that alone will be sufficient to account for our present conduct. They cannot deny the truth of this position, unless they feel a conviction that they have now become so indifferent about their liberties, as to be incapable of making a struggle in their defence, when they shall consider them as being really in danger. The different mediums through which we view our present political questions, will naturally cause us to form different opinions concerning them ; but, from the opinions which we have really formed as to them, those who differ with us in opinion, ought to be satisfied that our present conduct proceeds from the strongest attachment, and not from enmity to the constitution and the union of the United States : because, as the union is supported, and can be supported only by the constitution, and as that constitution cannot long be preserved, unless it is considered as sacred : those are the only real friends to the

union.

union, who endeavour to preserve that constitution from violation. From the just indignation which you must feel at having the sentiments of the state at large upon this important subject; to much misrepresented in other states; from a knowledge that those who bring this charge against us here, before you; exhibit the same charge against you in the other states before the people of America; you ought to listen with great caution, to those charges which are brought here, against some of your fellow citizens. You should always recollect, that whenever it is found that you cannot be deceived as to measures, that the next most effectual step, is, to try to deceive you as to the views of those who oppose those measures; because it is well known, that if you can be satisfied that their opposition proceeds from base and improper motives, that a part of the just indignation which you would then feel against them, would be transferred to the opposition itself. Prudence as well as charity therefore requires that you should believe no such accusation until it is proved, and then only; as to those against whom it is proved.

I have said so much as to the truth of the charge, considering it as involving others as well as myself; I have stated my opinion and belief, that it is false as to them; so far as I am involved in it, I know, and declare it to be false. From the declaration of independence, to this day, I have been uniformly and warmly, a friend to the union of America; from the time of publishing the present constitution of the United States, by the convention which formed it, to this day, I have been uniformly and warmly a friend to it: and I have proved my attachment to both, as well by my actions as my words. No action of my life, can be brought forward, which ought to cause a suspicion of the reality of my attachment to either of them. The reality of that attachment was never doubted before I came to this country; the foregoing letters will prove that the government has given me no personal cause of disgust since I came here; and I defy any man to say, that during my residence of nine years and a half in this state, he has ever heard me utter a word, which could prove, that I did not still feel these attachments in the strongest degree: when it is recollected that I now differ in sentiments from several with whom I formerly conversed freely and confidentially, on political subjects, this appeal ought to have its due weight. I also declare, that so far from my thinking that a separation of the union would be proper or my wishing to see it take place, that I am, and always have been firmly of opinion, that it would be destructive, and equally so, to every part of the United States; and that if such an attempt should be made, that I would oppose it by every means in my power: and I do assert, that so far from my being privy to any such design, I do not believe that any such design does exist in this state; and that during my residence in this country, I have never heard even one man, express an opinion that it ought, or a wish that it should take place.

I flatter myself that these observations will be sufficient to remove any unjust impressions which have been made on your mind, as to our opinions and designs. But, since you have mentioned the Spaniards,

niards, I will inform you what our *suspensions* are of the views of our government towards that nation. The war in which we are engaged with the French nation, promises no possible advantages ; therefore, although the people of America may have been deceived so far as to induce them to consent to enter into the war, the blood and treasure which must necessarily be expended in its prosecution, without a chance of a beneficial return of any kind ; will soon make them sick of such a war ; and open their eyes, as to the arts which forced them into it. But a war with Spain, would hold out all the allurements arising from the prospect of conquering a rich and weak country ; and as the Spaniards are now considered by our government, as “ a cowardly people,” they probably view that prospect as a very certain one ; and for this reason, a war with Spain as well as France, seems to be necessary, to complete the war system of our rulers ; and if war with all its attendant powers, armies, navies &c. &c. has been their real object ; and if the improper conduct of the French nation was only made use of as a pretext to obtain that object ; there may be strong reason to apprehend that such a line of conduct will be pursued, as will prevent that war from being terminated *too* soon. But you will recollect that I state this as a suspicion only, which may therefore prove to be groundless, however strong the grounds on which it is built, may now appear to be ; and however greatly that suspicion hath been strengthened in my mind, by some facts which have come to my knowledge.

You say, “ we think if Kentucky cannot pay a continental tax of thirty-six thousand pounds, when absentees pay so great a proportion of it, that her opinion on the subject, cannot weigh very heavily in the scale : especially as she is the weakest state but one, in the union, and the only discontented one.” It has long been a prevailing opinion with a certain party in America, that none but “ the wealthy and the well-born,” ought to have any share in government ; and the people have been represented on the floor of congress as “ an ignorant herd, who could easily be cajoled, flattered and deceived ;” but this is the first time, as far as I know, at least, that this doctrine hath been applied to any of the sovereign and independent states, which make a part of the union. If from our poverty and the smallness of our number, the opinion of the state of Kentucky ought to weigh but little in the scale, the same reasons ought to make the claims upon her for taxes, very light also : but as long as we find that these are enormously heavy, we cannot consent that the other shall be considered as weighing nothing : the constitution declares that the weight of the one shall be in proportion to the amount of the other ; and that each state, as well as each freeman in the United States, whether rich or poor, shall have an equal right to express his sentiments on all public questions. But, how do you come at the sum of thirty-six thousand pounds, as being the amount of our continental tax ? We will thank you if you will prove that it will come to no more. Our proportion of the direct tax of two million of dollars, is thirty-seven thousand, six hundred and forty-four dollars, and this is the proportion which is taken from the last census, but it is reduced

to a certainty, that a new census would increase that proportion more than one-third. But this direct tax produces only a very small part of the sum, which is now required by government, from the people, by way of taxes; for I find, by an estimate before me, that the whole expenditure of government, as now authorized by law, may amount in the present year, to twenty-one million, three hundred and twenty-one thousand, seven hundred and eighty-six dollars, without including any part of the expences which will be caused by the volunteers, if they should be called into service. Of this, our proportion would come to four hundred and one thousand, three hundred and thirteen dollars, according to the present census, and if you add to this sum the additional third, that the new census would oblige us to pay, we shall after a new census takes effect, upon the same annual amount of taxes, have to pay as our proportion of them, the sum of five hundred and thirty five thousand and eighty-three dollars. I know that a great part of the money that will be paid to the government, will be raised by the impost and the excise; but I am also well assured, that we shall pay as much more than our proportion of the excise, as we shall pay less than our proportion of the impost, if that fact is really so, which I do not admit to be the case. I have, from this view of the subject, no hesitation in declaring, that make the estimate of what we shall actually have to pay, in any way you will, that the amount must greatly exceed our abilities. I am happy to hear that your country is in so flourishing a condition, as to be able to pay her proportion of this sum "with pleasure;" but shall be better pleased, if the experiment, when actually made, shall prove that this is really the case; for I apprehend that you may have been as much mistaken in the real amount of her proportion, as you was in that of Kentucky. Virginia's proportion of the two million of dollars, was three hundred and forty-five thousand four hundred and eighty-eight dollars, and of consequence, her proportion of twenty-one million, three hundred thousand, will be three million, six hundred and eighty-five thousand, two hundred and five dollars.

You say "Jefferson and his adherents are fallen into the utmost contempt; and the factions members with us, are *sculking off* like the owls at the rising of the sun. With few exceptions (and there will always be some strange wrong headed creatures) the unanimity of the people is astonishing." I am happy in having an opportunity of declaring, when it can be attributed to no improper motive, that I have long since, changed the unfavourable opinion, which I once formed of that gentleman's political conduct, and that I consider him, as one of the most virtuous, as well as one of the ablest, of the American patriots. My information has led me to form, a different opinion from what you have done, as to the general sentiments of the people in Virginia, and as to the degree of esteem, in which, what you call your "factions members," are held by their constituents. I have been told, that except where some of your present representatives who would certainly have been re-elected, if they would have consented to it, have declined offering their service again, on account of their bad health, on from domestic considerations; that there

there will be very few changes made in your present representation ; and that where the present republican representatives are willing to serve again, and are opposed by aristocrats, that the latter, knowing that the bulk of the people do not think with them, are so far from avowing, in an open and manly manner, the sentiments of their party, that they assure the people that although they do differ with them in sentiment, in some things, that that difference is not as great as it has been represented to be ; and that as far as they do differ with them, they will, if they are elected, sacrifice their own opinions to those of their constituents, if they will instruct them on the subjects constituting that difference. If these facts are so, they prove unquestionably, that they are conscious, that they do not possess the confidence of the people ; and that they cannot be elected but upon the humiliating condition, of their promising beforehand, to advocate principles which they disapprove ; and these facts would also have justified you fully, if instead of saying “ that the present members were skulking off,” you had declared, that their opponents were “ trying to *sneak into office.*”

You say “ the greatest confidence is placed in our firm old president, and the glorious Washington.”

We do not place the greatest confidence in our present president, because we think his political and official conduct do not merit it. The bounds of a letter, which is already too long, will not permit my now stating the reasons of that opinion ; but you will probably soon see them at large. The citizens of this country have always entertained the most exalted ideas of the talents, as well as the virtues, of our late president : but we cannot put implicit confidence in any man’s opinions ; neither can we be duped, by an expectation of receiving a kind of service from him, which his present situation as commander in chief, will not enable him to render. When he was president, he had it in his power, and it was his duty, to dictate the measures which were to be pursued ; but as commander in chief, he has no hand in directing public measures, and is equally bound with a corporal, to obey those that are directed by others. His influence and his talents, may have a great effect in carrying into execution those measures which are dictated by others ; and if those measures are wise, just and constitutional, his services as a general will produce the happiest consequences. But if those measures should be weak, destructive and unconstitutional, then the great support they would receive from his name and talents, would be the greatest of misfortunes to his country. As commander in chief, we may safely calculate on receiving the most essential services from him, against any invading foreign enemy ; but as commander in chief, we cannot derive any aid from him, against domestic tyranny, and violations of our constitutions. No man doubts, if we are ever made subject to such a tyranny, but that it will be produced by violations of our constitution, by those who are invested with the powers of government : but the armies of the United States are raised by their order ; those armies are probably now to be *standing armies*, unconnected with the people, and having a separate and distinct

distinct interest from them : all their officers are to be appointed by one man, and to be entirely dependent on him for their continuance in commission : even the commander in chief could be dismissed by the president at any moment he thought proper, by a " Sir, I have no further occasion for your services." Where then is the security which can be derived, or ought to be calculated on, from his being in office, when the time of his continuing in office depends upon the arbitrary will and pleasure of another ; and when at the very moment that his being in office, might be really important, he would be liable to be discharged from it ? When you entrust the exercise of power to a virtuous man, you are safe ; but if the man to whom the power itself is entrusted, is vicious, no security can be derived from a temporary appointment, or one during his pleasure, made by him, of *an angel* to exercise a part of that power, under his orders ; because the angel must obey, and because he will be exchanged for a different character, whenever measures are brought into such a state, as to require a different character to execute them. But it may be said, that if our present commander in chief should ever be convinced, that the measures which were to be executed by him, had an evil and destructive tendency, that he would resign his commission, and sound the alarm of danger to the people of the United States. Admit that this would be the case, and yet this very argument proves the justness of the idea, that there is no security to liberty from his being in the present office ; because, if the only proper and honest step he could take, upon his being convinced that dangerous designs were formed against the liberties of his country, would be to resign his office ; what security can be derived from his now being in office, when, even if he is not dismissed from it, he must conscientiously retire from it, as soon as the hour of danger to our liberties, shall in his opinion arrive. For although his resignation, and his declaration of the reasons which caused it, might have a great effect on the minds of the people, they would probably be made too late to produce a change in public measures ; because the schemes against the liberty of our country, would then be ripe for execution ; and the means which those who planned those schemes, would have been long accumulating for their execution, would be an overmatch for any opposition which could then be made to them. We deceive ourselves greatly, if we suppose, that the virtues or popularity of any general, would upon his resigning his commission, or his being dismissed from the service, produce any convulsion or dangerous commotion, in a standing army. In such an army, both officers and soldiers know, that their pay and support do not come from him, but from the hand which appointed him. If then the keeping of their commissions and that pay, were their great and leading objects, in case of a quarrel between the president and their general, they would never take part with the latter, when they knew that the first could dismiss them at a word altogether from the service, and when all that the other could do, would be to recommend them as proper persons to fill occasional vacancies. Besides, although this limited

kind

kind of patronage, must necessarily give the general who possesses it, the means of making himself many friends, the exercise of it, will also make him a much greater number of enemies; as the number of those who will expect promotion, will always greatly exceed that of those, who will actually meet with it. In consequence of this, the disappointed will always constitute a great majority of the officers in the army; and it is to be presumed, that a change which would give them a chance of being more successful in their applications for promotion to a new general, would be pleasing, rather than otherwise, to them. The history of the French revolution affords abundant examples to justify these ideas. We there see, the most popular generals retiring, dismissed and beheaded, without its having had the smallest effect in the army. Under such a government, and such a situation as ours, a popular military character may be of infinite service to an ambitious man, in raising an army, and in keeping every thing in order, until he supposes his power sufficient to execute his purpose, and until his schemes are ripe for execution; and then, if this popular character is, from his being a virtuous man, an improper instrument for the execution of those schemes, he will be laid aside as useless, or sacrificed, as may be thought most proper under the existing circumstances. Many instances exist of the last kind, in the history of all countries; and a striking one of the first, in the history of England, during the time of the commonwealth. Fairfax was the commander in chief of the army; he was a successful and a popular general, and a virtuous man. He was kept in office until the plans of those who meditated a change in the government, were ripe for execution. They knew that he would never consent to that change, and the command of the army was then put into other hands. This alteration was made, without its causing any sensible alteration in the temper of the army; other officers were readily found to do what he would not have done, and the army was made the instrument to destroy even the shadow of liberty. What has happened, may happen again; and when we are calculating on its probability, we should recollect, that the monarchy-loving Hamilton is now so fixed, as to be able, with *one step*, to fill the place of our present commander in chief.

You say, " ninety thousand volunteers have offered their services, and been enrolled, to march with the utmost promptitude against foreign or domestic foes. If you oppose the laws, you will soon have old Morgan amongst you, at the head of fifteen or twenty thousand." I will assert with confidence, because I know that I cannot be contradicted with truth, that there is not only no action of ours in the present business, which ought to be considered as improper, but that there is not even a single sentiment which we have uttered, which can be pointed out, as worthy of censure. See our resolves throughout the state; they breathe one uniform spirit of attachment to the union, and to the constitution of the United States, and our fixed purpose of defending them against any enemy: it is true, they go further, and express in strong terms, the determined resolution of our souls, that we will sacrifice every thing we hold dear,

dear, before our inestimable liberties shall be torn from us, either by "foreign or domestic foes." Are these declarations the causes of the offence taken at our conduct? Do they constitute our deadly sin? And is it for having made them, that we are now threatened with being *dragooned* by that army, which was "raised to keep peace at home?" But let this threat have been caused by what it may, it will be ineffectual. Conscious that we wish nothing that is improper; that both our declarations and actions have been in strict conformity with our double duty as freemen and citizens, we shall persevere in the proper discharge of that duty, regardless of the consequences: and so far from being intimidated by such threats, they confirm all our former apprehensions of danger to our liberty, from the late measures of our government; for, if the new powers and force put into their hands, had been placed there with a good design, they would not so soon have dared to threaten to use them, for the most wicked of purposes. So far from our considering it as a reflection to have it said of us that we are the only discontented state in the union, we rejoice, if that is really so, that it will be recorded in the page of history, that "the poor, weak and despised" state of Kentucky, was the only state in the union, which as a state, declared its opposition to those unconstitutional acts of the general government, which threatened with the impetuosity of a torrent to sweep all our liberties before them. But I cannot believe, that the fact is, that this is the only state in the union, which judges properly of these measures, and which will discover a just abhorrence of them. If no other state in the union thinks as we do, Virginia, the ancient, the great, the powerful, the rich and the republican state of Virginia, still remains free and independent; and if she had not dared to vote against our president, from a dislike to his political sentiments; if she had not still retained her republican principles; and if she had not thought and been determined to act, as we have done; she would not have been grossly insulted, by a threat made by a *servant of the people*, that she should be "humbled in the dust and ashes." A threat the more insulting, because it was unprovoked; not being caused by any thing which had then been done in that state, but proceeding from an anticipated fear, that she would do something, which *the servant* using the threat was pleased to suppose, would be improper. But disgraceful and humiliating as the condition of Virginia was, when labouring under, without resenting, this gross insult; it is now done away, it is buried entirely in the recollection of, *that* never to be forgotten, that never to be equalled offence; that *treason* against the majesty of the people, which was committed by *that servant of a servant*, who when a constitutional address was sent to him, as an officer, by the free inhabitants of a large county, to be delivered to the president, returned it with a positive refusal to comply with their request; accompanied also, with the most scandalous abuse of them, and their sentiments. O Virginia, whither has that unconquerable spirit fled, which was once the admiration of the world; which stimulated you to be the foremost, in raising the standard of opposition to a tyrant, although he

was

was the absolute master of the force and resources of three kingdoms? Is that spirit evaporated and gone, or is it sunk so low, as to suffer you to *crouch* at the threats of your own servant, and *submit*, with patience, to the insolence of *the servant of that servant*? “The lion is not dead, he slumbers only;” rouse, rouse, my countrymen, once more put on, and use, the determined countenances and language of freemen; you need only declare that you will be free, to be so in reality. This is a time of struggle, of servants against their masters; if the masters do not support their authority, they must, they will, change places with their servants, and in their turn become “heivers of wood and drawers of water.” But all that is necessary to be done, is for the masters to declare, that this shall never be the case; as soon as the servants are really convinced, that this is the determination of their masters, their “indignant frowns” will give place to the most courtly smiles, which will then overspread their countenances, as they now do, those of your “would be representatives.” Office and its powers and emoluments, are their object; they will get and obtain them, on their own terms if they can; but if they cannot obtain, or hold them, on those terms, they will take them on your’s, sooner than not possess them.

If you had been better acquainted with the citizens of Kentucky, you would have known, that there was no just cause to apprehend an improper opposition to the laws from them. The laws which we complain of may be divided into two classes—those which we admit to be constitutional, but consider as impolitic; and those which we believe to be unconstitutional, and therefore do not trouble ourselves to enquire as to their policy; because we consider them as absolute nullities. The first class of laws having received the sanction of a majority of the representatives of the people of the United States, we consider as binding on us, however we differ in opinion, from those who passed them, as to their policy: and although we will exercise our undoubted right of remonstrating against such laws, and demanding their repeal, as far as our numbers will justify us in making such a demand; we will obey them with promptitude, and to the extent of our abilities, so long as they continue in force. As to the second class, or the unconstitutional laws, although we consider them as dead letters, and therefore that we might legally use force in opposition to any attempts to execute them; yet we contemplate no means of opposition, even to these unconstitutional acts, but an appeal to the *real laws* of our country. As long as our excellent constitution shall be considered as sacred, by any department of our government, the liberties of our country are safe, and every attempt to violate them may be defeated by means of *law*, without force, or tumult of any kind: and the more unconstitutional an act of the legislature shall be, the easier it will be to defeat it in this way; because there will be the less doubt of its having violated the constitution. How strongly then ought we to be attached to a constitution, which contains within it, what must be a sufficient security, until all the departments of our government shall be corrupted, against all attempts to violate it, or to infringe our liberties; it is a truth, which should

be solemnly and lastingly impressed on the mind of every true American; that he ought at all times to be ready to defend this constitution at the hazard of his life. Hamilton argues on this subject of the security to liberty, arising from the constitution, as he does on all others, where he has truth on his side, as well as it is in the power of man to do.

“ The complete independence of the courts of justice, is peculiarly essential in a limited constitution. By a limited constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

“ Some perplexity respecting the right of the courts to pronounce legislative acts void, because contrary to the constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

“ There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid. To deny this, would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorise, but what they forbid.

“ If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the su-

perior obligation and validity, ought of course to be preferred ; or, in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

“ Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both ; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

“ This exercise of judicial discretion in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation ; so far as they can by any fair construction be reconciled to each other ; reason and law conspire to dictate that this should be done : Where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time, shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an *equal* authority, that which was the last indication of its will, should have the preference.

“ But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority ; and that, accordingly, whenever a particular statute contravenes the constitution, it will be the duty of the judicial tribunals to adhere to the latter, and disregard the former.

“ It can be of no weight to say, that the courts on the pretence of a repugnancy, may substitute their own pleasure to the unconstitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes ; or it might as well happen in every adjudication upon a single statute. The courts must declare the sense of the law ; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved any thing, would prove that there ought to be no judges distinct from that body.”

As long therefore as the federal courts retain their honesty and
E independence,

independence, our constitution and our liberties are safe ; and a corrupt faction which should enact, and be desirous of enforcing, unconstitutional acts would be placed in this dilemma ; if they attempted to enforce them, the courts would declare them to be void : if they did not make the attempt, it would amount to an acknowledgment on their parts, that they were unconstitutional ; which would certainly and deservedly bring both the president and congress “ into contempt and disrepute with, and excite against them the hatred of, the good people of the United States.” I shall leave you to judge, whether the president’s having altogether neglected that part of his duty, which requires him “ to take care, that the alien and sedition bills, should be faithfully executed,” amounts to such an acknowledgment. But although uncorrupt judges always have a constitutional power, to prevent the operation of unconstitutional acts ; it is not equally in their power to enforce such acts : for when their decisions shall be *evidently contrary* to common sense and justice, as well as to the constitution, the minds of the people will revolt against them ; and then, instead of their promoting a general acquiescence in, and obedience to unconstitutional acts, they will certainly cause a general opposition to them, and that of the most dreadful kind ; because all men will then see, that there is no alternative left them, but resistance or slavery. A judicious writer expresses himself thus on this subject—“ That the conduct of the judges, even in their collective capacity, may sometimes be as censurable and corrupt as that of any other class of men, the decision of the judges in the case of ship-money, affords, indeed, a very memorable instance. Lord Clarendon himself, though both a lawyer and a royalist, expresses great indignation at the iniquitous conduct of the judges at that period, and speaks of their decision, as having been productive of the most pernicious consequences. He remarks, that the payment of ship money was more firmly opposed, after the judges had declared it to be legal, than it had been before. That pressure, says he, was borne with much more cheerfulness, before the judgment for the king, than ever it was after ; men before, pleasing themselves with doing something for the king’s service, as a testimony of their affection, which they were not bound to do ; many really believing the necessity, and therefore thinking the burden reasonable ; others observing, that the advantage to the king was of importance, when the damage to them was not considerable ; and all assuring themselves, that when they should be weary, or unwilling to continue the payment, they might resort to the law for relief, and find it. But when they heard *this demanded* in a court of law, *as a right*, and found it, by sworn judges of the law, adjudged so, *upon such grounds and reasons as every stander-by, was able to swear was not law*, and so had lost the pleasure and delight of being kind and dutiful to the king ; and instead of giving were required to pay, *and by a logic that left no man any thing which he might call his own : they no more looked upon it as the case of one man, but the case of the kingdom, not as imposition laid upon them by the king, but by the judges ; which they thought themselves bound in conscience to the public justice not*

to submit to. And here the damage and mischief cannot be expressed that the crown and state sustained, by the deserved reproach and infamy that attended the judges, by being made use of in this and like acts of power; there being no possibility to preserve the dignity, reverence, and estimation of the laws themselves, but by the integrity and innocency of the judges." Even the courtier Blackstone declares, that "to vindicate their rights, when actually violated or attacked, the subjects of England are entitled in the first place, to the regular administration and free course of justice in the courts of law; next, to the right of petitioning the king and parliament for redress of grievances; and *lastly*, to the right of having and using arms, for self-preservation and defence. And the same author also declares, that the right of resistance is a natural right, when "the sanctions of society and laws are found insufficient to restrain the violence of oppression." This right of resistance is also recognized and established in the fullest manner, by the federal constitution, as well as those of the different states; but it is a right which it can never be necessary to have recourse to, until all the departments of the government shall become corrupt; and ought not then to be appealed to except in cases of extreme danger and necessity. Let all good men unite their efforts to prevent the United States from being brought to that dreadful crisis.

You say, "28,000 persons have offered for commissions in the regular service." From the best calculation I can make, it would not take more than 500 officers for the corps of regulars; so that there were 56 applicants for each commission which was to be disposed of; and 27,500 of those who did apply, must have been disappointed. You do not say what became of those, who were not happy enough to receive commissions. Did their zeal and enthusiasm, when they found they could not serve their country in the station they would have preferred, cause them to enlist as privates, which no interest was necessary to procure them permission to do? I fear not; the American patriotism of the present day, is not of the kind which makes the greater part of those who are under its influence, ready to sacrifice life and fortune, and engage in the most disagreeable and unprofitable service, to serve their country: office—lucrative office, is the point to which all their exertions are carrying them. It is astonishing to hear of the immense number with you, who expect to be provided for by the government; the labour of those *who do work*, would not be sufficient to support those *who wish to live without it*. Brought up in idleness, they know not what to betake themselves to; labour, they will not, and to beg, they are ashamed: their whole dependence is therefore placed, in receiving provision from the government. To give them some claim to it, each of them exceeds his fellow, in his zeal for, and clamour in support of all their acts, including those which are yet to be done: they are anxiously wishing to sell their birth-rights for a mess of pottage. The more those measures have a tendency to increase the public burdens, and to impoverish the body of the people, the better they are pleased with them: because they render the more officers

necessary. They enlist also under the banners of the government party, all their friends and connexions. Multiply the whole number of officers employed in every department of the government, by fifty-six, and then add to the total amount, those who are interested in the public securities and banks; those whose mercantile interest cause them to support the present measures; those who expect to handle public money and to get jobs under the government; those, who wish to see the republican principles contained in our government, changed; and those, who are always ready to enlist themselves under the men in office: and you will readily account for the conduct of a great part of the present supporters of the late measures of the general government. I only say "a great part," for I am convinced, that many of our best citizens support those measures, because they think that there is a necessity for doing so: although I cannot but be of opinion, that they have formed that judgment, on mistaken grounds.

You say, "you know I love Nicholas. I really am most seriously concerned for him: assure him from a friend that loves him most sincerely, he is in danger. At any event, let him not oppose the execution of the laws. A watchful eye is kept upon him, and there are not wanting those in your country, who will readily take advantage of his indiscretions. Once more, give my warmest respects and affection to Nicholas. Entreat him to be cautious. Government will exercise all its energy. If he goes beyond certain lengths, he is lost. How could he use arguments to a most tumultuous mob, "that they could not pay their taxes: and that because our ships were bee-hives, French hornets must be permitted to eat them up;" and not hear him answered? O fie! It was rude, —uncivil,—but a true emblem of Kentucky manners!"

If we were *now* slaves, it might be improper for any one to tell his brother slaves, that they could not bear the burdens which their masters had imposed upon them. But as we are not *yet* fixed in that condition, it certainly must be right in a freeman, who believes that the imposing these burdens, and the other measures which accompany them, will bring his country into a state of servitude; to warn his fellow-citizens against giving their consent to such measures. Is it not better to enquire into our ability to support a war before we enter into it, than to discover that we are not able to carry it on, after we are engaged in it? And if the expences of *the first year* of the war, even according to the estimate made *by those* who want to force us into it, so greatly exceed our resources, that it would be impossible for us to pay the amount, if we were ever so willing to do it; is it more prudent and honourable to declare it now, or to wait until the war has been fully entered into by the other states, upon a supposition, that we can pay our proportion of the expences which will attend its prosecution? In a war like the present, which we have now made an offensive one, every thing of this kind ought to be taken into consideration; although it would be improper to do so, if our country was really attacked by any foreign power; because we ought *then*, to hazard every thing, rather than

than become subjects to any foreign nation. I never did think (much less say), that "because our vessels were bee-hives, that French hornets ought to be suffered to eat them up:" but I did say, and I still think, that in the present situation of America, the engaging in a maritime war, must be impolitic; more especially against a nation having no commerce; because such a war, even if successful, could afford us no captures, which would indemnify us for any part of the expence of it; for, as they have no merchant-men at sea, even our prizes would prove to be "hornets' nests, and not bee-hives." "If the lasting preservation of the honour, liberty and independence of America, is our real object, we should carefully avoid war, during the infant state of our country. Such premature efforts, bring on a state of imbecility in the political as well as the human body; and prevent either from attaining that degree of strength which they would otherwise certainly arrive at. Twenty years more of peace, would leave America fully competent to defend all her just rights against any nation—five years war at this time, would, probably, put it out of her power to do it with effect, for one hundred years to come."

Get better information, my friend, of the kind of men who composed that meeting which you call "a most tumultuous mob;" when you do, I am certain that you will find, that *you* never saw a meeting, the members of which possessed as much understanding, wealth, and public virtue, as those men did, who attended that meeting. You will also find, that you were misinformed when you was told, that "they refused to hear me answered." The fact is, I was answered twice, by a gentleman of very considerable abilities. It is also true, that the meeting refused to hear another person, who attempted to speak to them on that side of the question; but that proceeded from personal objections to the man. How does it happen, when the constitution declares that "the people have a right to assemble peaceably to petition for a redress of grievances;" when congress by publishing the communications from our envoys, appealed to the people as to their subject matter: when addresses have not only been received, but encouraged, from every part of America; and when the president has declared, that "there is a peculiar propriety in the people's expressing their sentiments on the present occasion;" that our meeting held for that purpose, should be denominated a mob? Does the propriety or illegality of such a meeting depend on their sentiments, so as to make it a regular, legal assembly when it applauds—but a mob, when it censures the measures of the government? If this is the law, it puts the privilege of holding "peaceable assemblies," on the same just and republican footing, that our rulers now want to place "the freedom of the press:" that they may both be exercised to *approve*, but never to *condemn* public measures.

If our manners are not as polished as those of the more civilized people in your part of America, you should excuse it—and attribute it in part, to our want of opportunities of attending levees, visiting place-men, and associating with *supple* courtiers and office-hunters.

When men associate with none but their equals, they will not acquire that refinement of manners, which is generally met with about courts; but they will retain, what is a thousand times more valuable—a greater proportion of republican veracity and independence. But if, from our situation, we can give you no aid in the article of manners, that same situation will enable us to do you a more essential service. We will preserve and keep alive for you and ourselves, that sacred fire of liberty, which once blazed so brilliantly throughout America; but which appears to be now entirely extinguished in the Eastern states; which the greatest efforts are making to destroy in the middle states; and which will require all the exertions of its friends and votaries to preserve it alive in the Southern states.

Your expressions of esteem and friendship for me, give me great pleasure, and the more so, because neither distance nor length of time, has been able to diminish, in the smallest degree, the sincere respect and affection which I have long entertained for you. It is not one of the smallest complaints that I have to make against our rulers, that they have acted in such a manner, as to divide in sentiments, men equally honest, and all anxiously wishing for the liberty and happiness of their country. That political conduct cannot be right, which causes a conscientious difference of opinion between friends, brothers, father and son. But as that difference in sentiment does really exist, no man can honourably or virtuously sacrifice his opinion to that of his nearest connexion; all that remains is, that we should each of us suppose, that it is more than possible, that he errs in his opinions; and not suffer any difference in sentiment to change his esteem or affection for another, who has an equal right to think for himself, and who has honestly exercised his judgment in forming his opinion.

Although I consider your fears for me as proceeding from your friendship, and therefore thank you for suggesting them, I view them as unnecessary; I have none such for myself. As long as my country continues free, I care not who watches me; I wish all my thoughts, words, and deeds, so far as they concern the public, to be known. He who has no political objects, but the happiness and liberty of his country, need not fear having them exposed to the eyes of the world. And if the time has come, when that liberty is to be terminated, I have lived long enough. Indeed, I have lived too long; for if that is to be the case, it would have been better that I should have died, before I became the father of eleven children; and before I had instilled into them republican principles, which must add greatly to their wretchedness, if they are now to be slaves. I can suffer nothing by my conduct in the first event; and although my sufferings may be greater for a time, in the second, they will also be of shorter duration: and if those sufferings should be one means of opening the eyes of my countrymen, so as to cause a destruction of the tyranny which inflicted them, it would be a sufficient consolation to me, even in the moment of execution and death.

The result of my thoughts on this subject is, I have lived too long as a freeman, ever to act *well* the part of a slave; my conduct has
been

been such, as to give me no just cause to fear any thing from law and justice ; and I know not how to shape that conduct, so as to escape punishment from lawless power : I will therefore continue to pursue that line of conduct which my conscience tells me is right ; and then, happen whatever may, I shall carry with me self-approbation, and the applause of the wise and the virtuous. As I have no improper views, there is no danger of my “ going beyond certain lengths ;” indeed from my knowledge of myself, and from the obstacles which I find in my way, I am more afraid that, my constancy failing me, I shall stop short of what my duty as a father and a citizen ought to stimulate me to ; than that I should go beyond that line of conduct, which they would make it proper for me to pursue.

When I began this letter, I intended it for your sight only ; but after I had reflected, that the reasoning contained in your's, was that of the aristocratical party, dressed up in your energetic language ; and that the misrepresentations which had reached you, of *our* views, language and conduct, had also been made to thousands besides you : I determined to publish my answer to that reasoning, and my corrections of those unjust statements. If by doing so, I can be in any manner instrumental in removing the improper impressions caused by either of them, it will make me happy ; if nothing that I have said can produce that effect, I shall still retain the pleasing consolation, which arises from the reflection, that I have done my duty.

Let the event be what it may, be assured, that I shall always continue to be,

Your affectionate friend,

GEORGE NICHOLAS.

Lexington, November 10, 1798.

E 327

N5

X

Call 67 315041 F

UNIVERSITY OF CALIFORNIA LIBR

BY

M180782

E327
N5

THE UNIVERSITY OF CALIFORNIA LIBRARY

